

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

September 14, 2018

PSF No: 15KD-050

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

KAUAI

Amend Prior Board Action of July 24, 2015, Item D-2, Sale of Portion of Ditch Easement G, to Clement T. Esaki and Amy I. Esaki, Trustees of the Clement T. Esaki and Amy I. Esaki Trust, at Kapahi Farm Lots, Kapaa, Kawaihau, Kauai, Tax Map Key: (4) 4-6-011:028.

The purpose of the amendment is to change the referenced easement area from 1,500 square feet to 3,257 square feet.

BACKGROUND:

At its meeting of July 24, 2015, item D-2, the Board of Land and Natural Resources approved the sale of a portion of abandoned Ditch Easement G to Clement T. Esaki and Amy I. Esaki, Trustees of the Clement T. Esaki Trust and the Amy I. Esaki Trust. See Exhibit 1 attached.

The applicants' private property identified as Tax Map Key: (4) 4-6-011:028, contains a ditch identified as Ditch Easement G (Easement G). The subject ditch was reserved to the State of Hawaii in perpetuity and is fifteen (15) feet wide, for ditch purposes, over, upon and across the above-described Lot 7, together with rights of ingress and egress thereto for construction, maintenance, inspection, re-construction and repair of said ditch.

In the 1900s Makee Sugar Company built the irrigation system to bring water to the various sugar cane fields. In 1933, Makee Sugar Company was purchased by the Lihue Plantation Company, which maintained the irrigation system.

In November 2000, the Lihue Plantation Company closed, and the East Kauai Water User's Cooperative was incorporated in March 2001, to preserve the irrigation system.

Ditch Easement G was a part of that irrigation system being maintained by the East Kauai Water User's Cooperative. As time passed, Easement G was no longer needed as the surrounding lands were being converted to residential lots, causing Easement G to be

abandoned.

REMARKS:

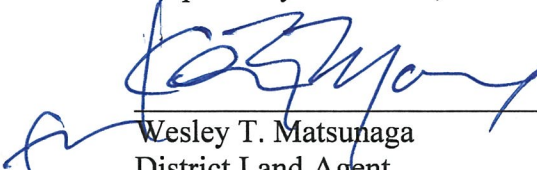
In preparing the conveyance document in favor of the Esaki Trust, the Office of the Attorney General noted that there were some discrepancies in the easement area as described in the Board Action, the Public Notice, and the survey. The Board action of July 24, 2015 and the Public Notice both indicated Easement G was 1,500 square feet, however, the survey indicated that the area of Easement G was 3,257 square feet. Research determined that the area as shown in the survey was the actual and correct area, thus requiring the Board action and the Public Notice to be amended. A copy of CSF Map No. 25,578 depicting the correct area is attached as Exhibit 2.

As a result, staff is requesting that the Land Board amend its prior Board action of July 24, 2015 (Item D-2), by increasing the easement area referenced from 1,500 square feet to 3,257 square feet. The public notice will be published with the corrected easement area.

RECOMMENDATION: That the Board:

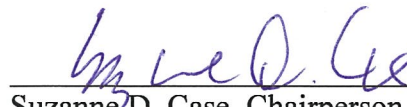
1. Amend its Prior Board Actions of July 24, 2015, under agenda item D-2 by changing the area referenced for Ditch Easement G from 1,500 square feet to 3,257 square feet.
2. Except as amended hereby, all terms and conditions listed in its July 24, 2015 approval to remain the same.

Respectfully Submitted,



Wesley T. Matsunaga
District Land Agent

APPROVED FOR SUBMITTAL:



Suzanne D. Case, Chairperson

AMENDED

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

July 24, 2015

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

PSF No.:15KD-050

Kauai

Sale of a Portion of Ditch Easement G to Clement T. Esaki and Amy I. Esaki, Trustees of the Clement T. Esaki Trust and Amy I. Esaki Trust, Kapahi Farm Lots, Kapaa, Kawaihau, Kauai, Tax Map Key: (4) 4-6-011:028.

APPLICANTS:

Clement and Amy Esaki, Trustees of the Clement T. Esaki Trust and Amy I. Esaki Trust.

LEGAL REFERENCE:

Sections 171-57 & 16(d), Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands situated at Kapahi Farm Lots, Etc., Kapaa, Kawaihau, Kauai, identified by Tax Map Key: (4) 4-6-011:028, specifically a portion of Easement G as shown on the attached map labeled Exhibit A.

AREA:

1,500 square feet, more or less.

ZONING:

State Land Use District: Agricultural
County of Kauai CZO: Agricultural

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act
DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: NO

as amended
APPROVED BY THE BOARD OF
LAND AND NATURAL RESOURCES
AT ITS MEETING HELD ON
July 24, 2015

D-2

EXHIBIT 1

CURRENT USE STATUS:

Vacant and unencumbered.

CHARACTER OF USE:

Right, privilege and authority for the construction, maintenance, inspection, re-construction and repair of said ditch.

COMMENCEMENT DATE:

To be determined by the Chairperson.

CONSIDERATION:

One-time lump sum payment equaling the difference in fair market value of the subject land with and without the easement reservation (portion of easement G), to be determined by independent appraiser contracted for by the State, subject to review and approval by the Chairperson.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

Refer to Exhibit B – Exemption Notification letter.

DCCA VERIFICATION:

Not applicable. The Applicants as individuals are not required to register with DCCA.

APPLICANT REQUIREMENTS:

Applicant shall be required to:

- 1) Pay for an appraisal to determine one-time lump sum payment equaling the difference in fair market value of the subject land with and without the easement.
- 2) Pay for the cost of public notice pursuant to HRS section 171-16(d).

REMARKS:

Applicants are the owners of parcel (4) 4-6-011:028 as staff has confirmed by the County of Kauai, Real Property Tax Office web site. The applicant's lot was once part of Lot 7 before being subdivided.

Land Patent Grant 13,300 granted to Joseph Paul Ornellas and Barbara Jean Souze Ornellas, husband and wife, all of Lot 7 "Kapahi Farm Lots". being portion of the Government (Crown) Land of Kapaa, an area of 20.00 acres (more or less), while reserving the following

easements:

RESERVING ALSO to the Territory of Hawaii in perpetuity for itself, its lessees, licensees and grantees, Easements C and G, each fifteen (15.00) feet wide, for ditch purposes, over, upon and across the above-described Lot 7, together with rights of ingress and egress thereto for the construction, maintenance, inspection, re-construction and repair of said ditches. Said Easements C and G being shown on the plan attached hereto and made a part hereof.

See Exhibit C.

In the 1900s Makee Sugar Co. built an irrigation system to bring water to various sugar cane fields from nearby mountain streams. Makee Sugar Co. was purchased by Lihue Plantation Company (LPC) in 1933, and LPC continued to maintain various irrigation systems to the sugar fields.

After LPC closed in November 2000, the East Kauai Water Users' Cooperative was incorporated in March, 2001 to preserve the irrigation system above Kapaa, Kauai.

Easement G was part of this system. As time passed, Easement G was no longer needed as the lands it served were turned into residential lots and Easement G was abandoned.

Applicants have not had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions.

Section 171-57, HRS allows the Board to authorize disposal of an easement reservation to the State by direct sale. Staff recommends an appraisal be conducted to determine the consideration payable to the State from the sale of portion of Easement G.

Comments were solicited from the agencies identified below with the results indicated.

State Agencies:

DOH	No objections
DLNR – Historic Preserv.	No comments received by suspense date
OHA	No comments received by suspense date

County Agencies:

County Planning	No objections
Public Works	No objections

Other Agencies:


EKWUC	Easement G on subject lot abandoned
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The disposition of this easement does not involve any expansion or change of use beyond that previously existing. Therefore, staff believes this transaction to be exempt from the preparation of an environmental assessment.

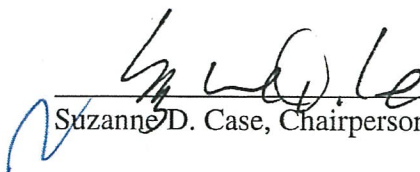
RECOMMENDATION: That the Board:

1. Find that the sale of portion of Easement G is not prejudicial to the best interest of the State, community or area in which the ditch easement reservation is located.
2. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200, HAR, this project will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.
3. Authorize the subject requests to be applicable in the event of a change in the ownership of the abutting parcel described as Tax Map Key: (4) 4-6-011:028, provided the succeeding owner has not had a lease, permit, easement or other disposition of State lands terminated within the last five (5) years due to non-compliance with such terms and conditions.
4. Subject to the Applicant fulfilling all of the Applicant requirements listed above, authorize the direct sale of a portion of ditch easement to Clement Esaki and Amy Esaki covering the subject area under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
 - A. The standard terms and conditions of the most current sale or release of easement form, as may be amended from time to time;
 - B. Review and approval by the Department of the Attorney General; and
 - C. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,


Marvin Mikasa
District Land Agent

APPROVED FOR SUBMITTAL:

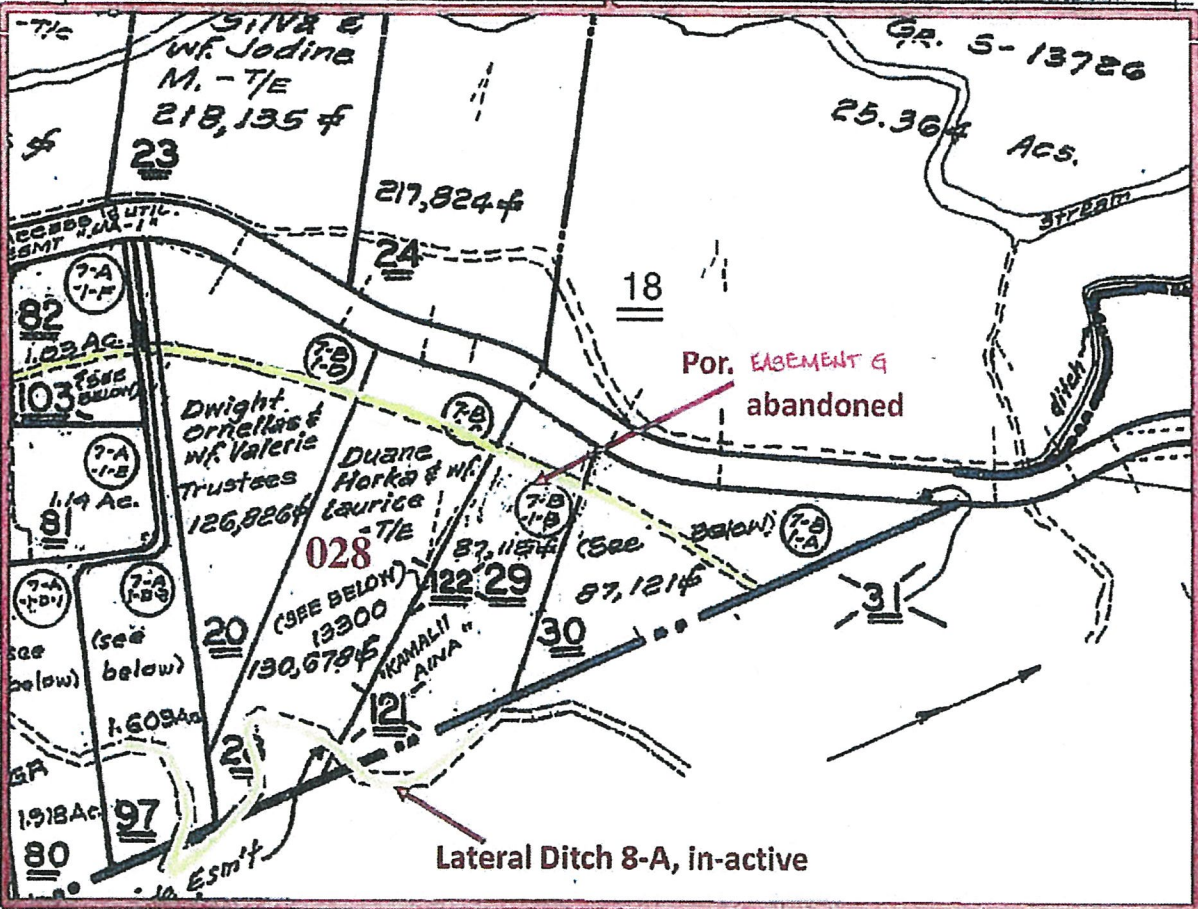

Suzanne D. Case, Chairperson

Land Board Meeting: July 24, 2015;
D-2: Approved as amended.

Approved as amended. See attached
page.

Land Board Meeting: July 24, 2015; D-2: Approved as amended.

Approved as amended. The Board Member Oi made a motion requesting that the appraiser who is procured to value the easement being disposed of consider that the easement was created in 1952 by reservation in Land Patent Grant 13,300.



TMK 4-6-011:028 East Kaua'i Water Sys. - State of Hawai'i 2001

DAVID Y. IGE
GOVERNOR OF HAWAII



**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

KEKOA KALUHIWA
FIRST DEPUTY

W. ROY HARDY
ACTING DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAILOOLAE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

EXEMPTION NOTIFICATION

From the preparation of an environmental assessment under the authority of Chapter 343, HRS and Chapter 11-200, HAR

Project Title: Sale of portion of Easement G in Favor of the State of Hawaii to Clement T. Esaki and Amy I. Esaki, Trustees of the Clement T. Esaki Trust and Amy I. Esaki Trust, Kapaa, Kawaihau, Kauai, Tax Map Key: (4) 4-6-011:por. Easement G.

Project Number: PSF No. 15KD-050

Project Location: Kapahi Farm Lots, Etc., Kapaa, Kawaihau, Kauai, identified by Tax Map Key: (4) 4-6-011:por. Easement G.

Project Description: Proposed sale of a portion of Easement G through private property owned by the applicants. Said easement was part of Land Patent Grant No. 13,300 granted to Joseph Paul Ornellas and Barbara Jean Souza Ornellas in October, 1957 as part of Lot 7. Easement G was part of Makee Sugar Co. irrigation system built in the 1900's. Makee Sugar Co. was purchased by Lihue Plantation Co. in 1933. After Lihue Plantation closed, East Kauai Water Users' Cooperative was incorporated in 2001 to preserve the irrigation system above Kapaa, Kauai. As time passed, Easement G was no longer needed as lands it served were turned into residential lots. It was abandoned.

Chap. 343 Trigger(s): Use of State Land

Consulted Parties: East Kauai Water Users Cooperative

Exemption Class No. In accordance with the Division of Land Management Environmental Impact Statement Exemption List, approved by the Environmental Council and dated April 28, 1986, the subject project is considered to be exempt from the preparation of an environmental assessment pursuant to:

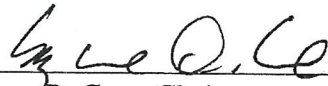
Exemption Class No. 1, "Operations, repairs or maintenance of existing structures, facilities, equipment or topographical features, involving negligible or no expansion or change of use beyond that previously existing." and

EXHIBIT B


Exemption Class No. 4, which states, "Minor alterations in the conditions of land, water or vegetation."

Recommendation:

That the Board find this project will probably have minimal or no significant effect on the environment and is presumed to be exempt from the preparation of an environmental impact statement.



Suzanne D. Case, Chairperson



Date 7/15/15

Land Patent No. 13,300

(Grant)

Issued On

SALE OF HOMESTEADS FOR CASH WITHOUT
RECOURSE TO DRAWING OR LOT

By THIS PATENT the Governor of the Territory of Hawaii, in conformity with the laws of the United States of America and of the Territory of Hawaii,

and in conformity more particularly with Section 73 (1) of the Hawaiian Organic Act as amended by Public Law 484, Chapter 617, 82nd Congress, 2nd Session, H.R. 4799, (66 Stat. 515), approved July 9, 1952,
makes known to all men that he has this day granted and confirmed unto

----- JOSEPH PAUL ORNELLAS and BARBARA JEAN SOUZA ORNELLAS, -----
husband and wife, as tenants by the entirety,
hereinafter called the "PATENTEE",

for the consideration of their having paid into the Treasury the sum of
TWELVE THOUSAND EIGHT HUNDRED EIGHTY AND 00/100- Dollars, \$12,880.00 ,

and in further consideration of the covenants of the PATENTEE
above named, hereinafter set forth,

all of the land situate at - KAPAA
in the District of KAWAIIHAU (PUNA) - Island of KAUAI - bounded
and described as follows:

LOT 7 KAPAHI FARM LOTS

Being portion of the Government (Crown) Land of Kapaa.

BEGINNING at a 3/4-inch pipe at the north corner of this lot, the east corner of Lot 6, Kapaahi Farm Lots, and on the west side of Kaapuni Road, the coordinates of said point of beginning referred to Government Survey Triangulation Station "NOMOU" being 10849.95 feet North and 4789.56 feet East, as shown on Government Survey Registered Map 4075, thence running by azimuths measured clockwise from True South:-

1. Along the west side of Kaapuni Road, on a curve to the left having a radius of 705.00 feet, the chord azimuth and distance being 310° 03' 12" 112.55 feet to a 3/4-inch pipe;
2. 305° 28' 30" 320.25 feet along the west side of Kaapuni Road to a 3/4-inch pipe;
3. Thence along the west side of Kaapuni Road, on a curve to the right having a radius of 235.00 feet, the chord azimuth and distance being 327° 22' 30" 175.30 feet to a 3/4-inch pipe;
4. 349° 16' 30" 190.72 feet along the west side of Kaapuni Road to a 3/4-inch pipe;

EXHIBIT "C"

5. Thence along the west side of Kaapuni Road, on a curve to the left having a radius of 211.00 feet, the chord azimuth and distance being 541° 18' 12.00 feet to a 3/4-inch pipe;
6. 333° 07' 30" 72.09 feet along the west side of Kaapuni Road to a 3/4-inch pipe;
7. Thence along the west side of Kaapuni Road, on a curve to the right having a radius of 271.00 feet, the chord azimuth and distance being 342° 58' 10.00 feet to a 3/4-inch pipe;
8. 352° 08' 30" 136.09 feet along the west side of Kaapuni Road to a 3/4-inch pipe;
9. Thence along the west side of Kaapuni Road, on a curve to the left having a radius of 341.00 feet, the chord azimuth and distance being 337° 29' 17.00 feet to a 3/4-inch pipe;
10. 322° 49' 30" 354.04 feet along the west side of Kaapuni Road to a 3/4-inch pipe;
11. 115° 30' 1678.96 feet along Grant 5266 to Kufua Spelling to a 3/4-inch pipe;
12. 221° 40' 961.26 feet along Lot 6, Kapahi Farm Lots, to the point of beginning.

AREA 20.00 ACRES

RESERVING to the Territory of Hawaii in perpetuity for itself, its lessees, licensees and grantees, an Easement ten feet wide, for ditch purposes, over, upon and under the above-described Lot 7, together with rights of ingress and egress thereto for the maintenance, inspection, re-construction and repair of said ditch. Said Easement being shown on the plan attached hereto and made a part hereof.

RESERVING ALSO to the Territory of Hawaii in perpetuity for itself, its lessees, licensees and grantees, Easements C and D, fifteen (15.00) feet wide, for ditch purposes, over, upon and under the above-described Lot 7, together with rights of ingress and egress thereto for the construction, maintenance, inspection, re-construction and repair of said ditches. Said Easements C and D being shown on the plan attached hereto and made a part hereof.

RESERVING ALSO to the Territory of Hawaii in perpetuity for itself, its lessees, licensees and grantees, all rights in and to ground and surface waters which are or may be appertaining to the land herein described or the ownership thereof.

RESERVING ALSO to the Territory of Hawaii in perpetuity for itself, its lessees, licensees and grantees, all rights in and to minerals, mineral substances, oil and natural gas or other substances in or upon the land herein described, together with the right to enter upon said land for the purpose of mining, drilling or otherwise capturing, collecting or removing the same and of transporting such raw or processed materials from the land.

Containing

20.00 ACRES

, more or less

TO HAVE AND TO HOLD the above granted Land unto the said

JOSEPH PAUL ORNELLAS and BARBARA JEAN SOUZA ORNELLAS,
husband and wife, as tenants by the entirety,

their assigns and the heirs and assigns of the survivor of them for

SUBJECT, HOWEVER, to the reservations, conditions and covenants set
forth in the insert sheets attached hereto and made a part hereof.

IN WITNESS WHEREOF, The Governor of the Territory of
Hawaii has hereto set his hand and caused the Great
Seal of the Territory to be hereunto affixed, this
____ 30th day of October, A.D. 1937.

TERRITORY OF HAWAII

William F. Quinn
Governor of Hawaii

Countersigned:

James H. [Signature]
Commissioner of Public Lands.

Approved as to form:

William F. Quinn
Governor of Hawaii

Written by ML

Checked by ML

[Signature]



STATE OF HAWAII
SURVEY DIVISION
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
HONOLULU

C.S.F. No. 25,578

January 20, 2017

PORTION OF EASEMENT G
FIFTEEN (15.00) FEET WIDE FOR DITCH PURPOSES

Kapaa, Kawaihau, Kauai, Hawaii

Being a portion of Easement G, fifteen (15.00) feet wide for ditch purposes, reserved to the Territory of Hawaii in Grant 13,300 to Joseph Paul Ornellas and Barbara Jean Souza Ornellas.

Being also a portion of Lot 7-B-1-C of the subdivision of Lot 7 of Kapahi Farm Lots.

Beginning at the northeast corner of this easement, the coordinates of said point of beginning referred to Government Survey Triangulation Station "NONOU" being 10,175.21 feet North and 5220.10 feet East, thence running by azimuths measured clockwise from True South:-

- | | | |
|----|----------|--|
| 1. | 336° 12' | 117.91 feet along the remainder of Grant 13,300 to Joseph Paul Ornellas and Barbara Jean Souza Ornellas; |
| 2. | 343° 18' | 99.88 feet along the remainder of Grant 13,300 to Joseph Paul Ornellas and Barbara Jean Souza Ornellas; |
| 3. | 77° 16' | 15.04 feet along the remainder of Grant 13,300 to Joseph Paul Ornellas and Barbara Jean Souza Ornellas; |
| 4. | 163° 18' | 97.91 feet along the remainder of Grant 13,300 to Joseph Paul Ornellas and Barbara Jean Souza Ornellas; |
| 5. | 156° 12' | 118.39 feet along the remainder of Grant 13,300 to Joseph Paul Ornellas and Barbara Jean Souza Ornellas; |

January 20, 2017

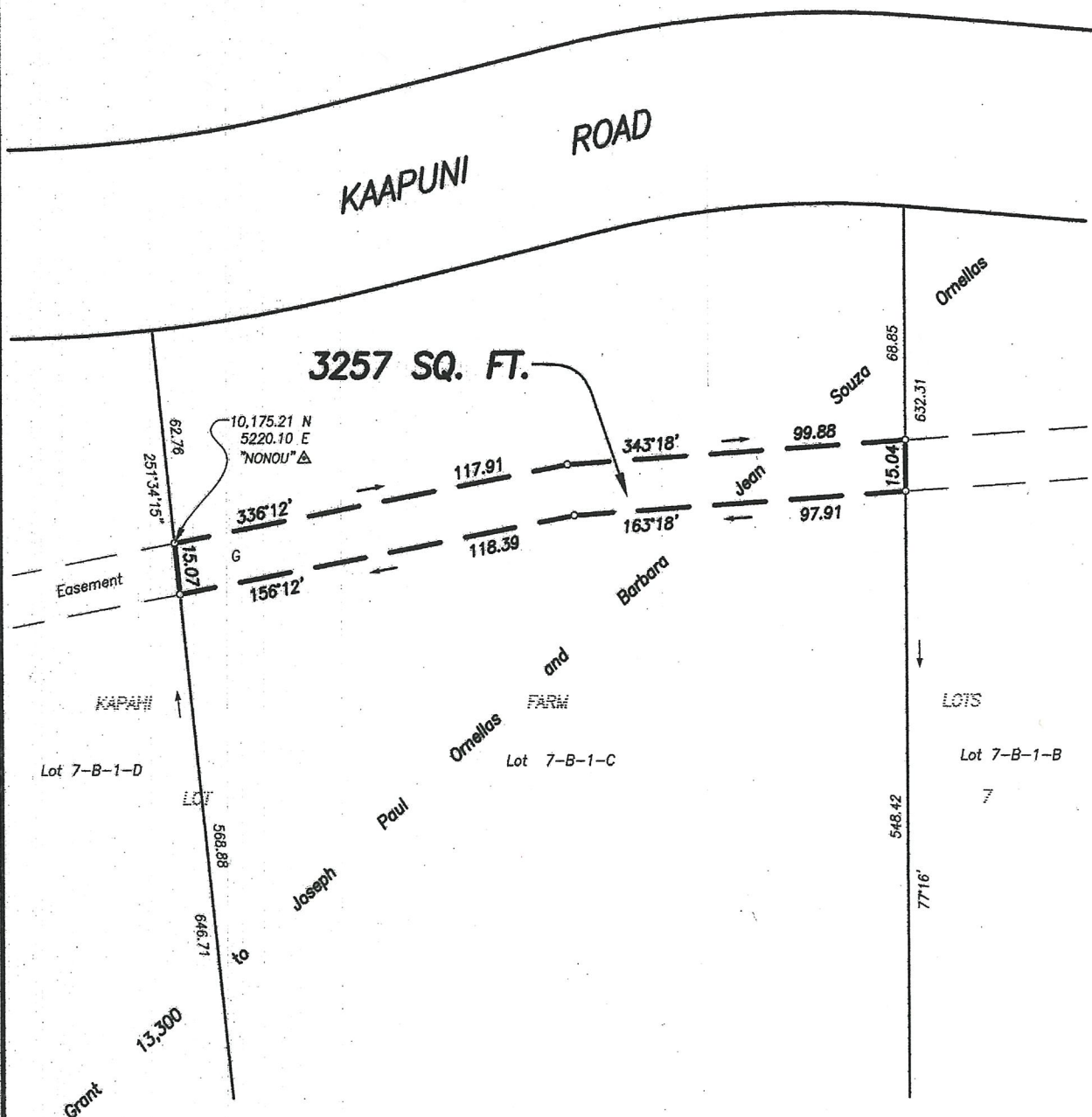
6. 251° 34' 15" 15.07 feet along the remainder of Grant 13,300 to Joseph Paul Ornellas and Barbara Jean Souza Ornellas to the point of beginning and containing an AREA OF 3257 SQUARE FEET.

SURVEY DIVISION
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
STATE OF HAWAII

By: *Gerald Z. Yonashiro*
Gerald Z. Yonashiro
Land Surveyor rk

Compiled from map and desc.
furn. by Esaki Surveying & Mapping,
Inc. Said map and desc. have been
examined and checked as to form and
mathematical correctness but not on the
ground by the Survey Division.

TRUE NORTH
Scale: 1 in. = 40 ft.



**PORTION OF EASEMENT G
FIFTEEN (15.00) FEET WIDE FOR DITCH PURPOSES**

Kapaa, Kawaihau, Kauai, Hawaii

Scale: 1 inch = 40 feet

Job K-289(16)
C. BK.

TMK 4-6-11: Por. 28

C.S.F. NO. 25,578

**SURVEY DIVISION
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
STATE OF HAWAII**

MAC January 20, 2017